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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,324	01/20/2004	Brett Lickle	LKL-100	9784
66612 7590 07/28/2008 MCCARTER & ENGLISH, LLP BASIL S. KRIKELIS Renaissance Centre 405 N. King Street, 8th Floor WILMINGTON, DE 19801				
EXAMINER				
NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
07/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,324

Applicant(s)

LICKLE, BRETT

Examiner

TAM NGUYEN

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11, 13, 14 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11, 13, 14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 6-14 and 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6 and 16 recite the limitation "the plane" in lines 8 and 12 respectively. There is insufficient antecedent basis for this limitation in the claims. Furthermore, it is not readily apparent how the lower surface can have a plane since a plane is defined by "a surface in which if any two points are chosen, a straight line joining them lies wholly in that surface" according to Merriam Webster's Collegiate dictionary, 10th Edition. Accordingly, this claim will not be given patentable weight in order to expedite the prosecution. Claims 7-14 and 17-19 are also rejected for being dependent on rejected base claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6, 7, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. '371 in view of McGuiness (6,168,551).

2. As to claim 6, 7, 9 and 16, Armer, Jr. discloses a balance trainer device and inherently a method for exercising as substantially claimed, the device comprising a board (14) and a single substantially spherical balancing insert (12) wherein the board comprises an upper surface (24) and a lower surface (22) having a circularly shaped concave region extending into the board below the upper surface from the lower surface toward the upper surface with the concave region adapted to receive the balance insert to allow the board to ride over the insert such that the upper surface is adapted to permit a user to distribute his weight to any position on the upper surface and the concave region encompasses an area between 15%-95% of the lower surface wherein the apex of the concave region is disposed between the lower surface and the upper surface, and the shape of the board is not-spherical (see Figs. 1-4, Col. 2, lines 17-21 & Amended Fig. 2 shown in the Office Action dated October 29, 2007). Armer does not disclose that the concave region is non-symmetrically located in the board. McGuiness discloses a similar balancing device having a board (46) that is shaped as a surf board (see Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to change the shape of Armer's board into any of an array of shapes including that of McGuiness' board to further simulate surfing or other board sports such as skating or snowboarding. Since the shape of the surfboard is inherently non symmetrical, the placement of the concave region will be located non-symmetrically in the board.

Claims 8, 10, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. '371 in view of McGuinness '551 and in further view of Sasser, Jr. (3,488,049).

3. As to claims 8 and 10, Armer and McGuinness disclose a modified balance trainer as substantially claimed (see discussion of claim 6). Armer does not disclose that board includes a concave region with a substantially oval or rectangular shape. Sasser discloses a similar trainer having a board (20) having a concave region (30) with a substantially oval/oblong or rectangular shape (see Figs. 1, 2, 4 & 6 and Col. 1, lines 64-69). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the shape of Armer's concave region into any of an array of shapes including that of an oval or rectangle as long as the insert is still able to rotate in all directions and the shape provides an adequate stop to prevent the platform from disengaging from the spherical fulcrum insert. A change in the shape of a prior art device is a design consideration within the skill on the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

4. As to claims 14 and 17, Armer and McGuinness disclose a modified balance trainer as substantially claimed (see discussion of claims 6 and 16). Armer does not disclose that the trainer further comprises a platform having a concave top surface and a substantially flat bottom surface wherein the balance insert rides on said top surface. Sasser discloses a similar trainer having a platform (42) having a concave top surface (62) and a substantially flat bottom surface (54) wherein the balance insert (34) rides on said top surface (see Figs. 3-6). At the time of the invention, it would have been

obvious to a person of ordinary skill in the art to combine Sasser's platform with the modified board to allow a user to ride the board over the insert in a plurality of directions but within a fixed area defined by the concave top surface when overall floor space for the trainer is limited.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armer, Jr. '371 in view of McGuinness '551 and in further view of England '768.

5. As to claims 18 and 19, Armer and McGuinness disclose a modified trainer as described above (see discussion of claim 16). Armer does not disclose that the method further includes providing a plurality of boards each having a different concave region to obtain a desired level of exercise and sequentially the difficulty by selecting boards with gradually increased surface area. England discloses a similar trainer having a board (11) and an insert (12) wherein the method of exercise includes providing a plurality of boards each having a different concave region to obtain a desired level of exercise and sequentially the difficulty by selecting boards with gradually increased surface area (see col. 4, lines 34-45. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to exercise with boards having sequentially larger concave regions to further develop the users.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 21, 2008

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764